IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.145 of 2001

Thiru Myilvangam .. Appellant/Complainant

vs.

S.P.Sundarakesari .. Respondent/Accused

Prayer: This appeal has been preferred against the order dated 31.07.2000 made in C.C.No.106 of 1999 on the file of the Judicial Magistrate No.II, Hosur.

For Petitioner : Mr.N.S.Sivakumar
For Respondent : Mr.J.R.K.Bhavananthan

JUDGMENT

This appeal has been preferred against the judgment in C.C.No.106 of 1999 on the file of the Judicial Magistrate No.II, Hosur.

2. The short facts of the case relevant for the purpose of deciding this revision are as follows:-

A private complaint was preferred by the complainant under Section 200 of Cr.P.C., for an offence under Section 138 of the Negotiable Instruments Act against the accused alleging that after receiving a loan of Rs.9,51,322/- on 7.6.1997, the accused had drawn two cheques one for Rs.4,54,357/- and another for Rs.4,96,785/- on 30.1.1999 in favour of the complainant in order to discharge the above said debt. When those cheques were presented for encashment in Syndicate Bank, Hosur Branch, by the complainant on 4.2.1999, the cheques were returned by the bank on the ground 'payment stopped by the drawer' on 11.2.1999. When the above said fact of dishonour of the cheques was informed to the complainant, he had issued a notice as required under law to the accused informing about the return of those two cheques drawn by the accused on 30.1.1999. Even after the receipt of the said notice, the accused not cared to discharge the said debt.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The complaint was taken on file by the learned Judicial Magistrate after recording the sworn statement of the complainant. On appearance of the accused on summons copies under Section 207 of Cr.P.C., were furnished to the accused and when the offence was explained to the accused and questioned, the accused pleaded not guilty.

4. On the side of the prosecution P.W.1 to P.W.3 were examined and Ex.P.1 to Ex.P.8 were marked.

5. P.W.1 is the complainant. Before the trial Court, the complainant would depose what he has narrated in the complaint. Through the complainant-P.W.1 the dishonouring of the cheques dated 30.1.1999 were exhibited as Ex.P.1 and Ex.P.2 respectively. Ex.P.3 & Ex.P.4 are the memos of the bank informing that the above said two cheques were returned on the ground 'payment stopped by the drawer'. Ex.P.5 is the copy of the suit notice dated 18.2.1999 issued by the complainant to the accused on 20.2.1999. P.W.1 would say that the accused had received the original of Ex.P.5 notice. According to P.W.1, inspite of the receipt of notice the accused had not chosen to discharge the loan.

6. P.W.2 is the bank Manager of Syndicate Bank, Hosur Branch. According to P.W.2, the complainant is having an account in the said branch of the bank and Account No. is 1726 and the complainant had presented Ex.P.1 & Ex.P.2 cheques for encashment and when those two cheques were forwarded to the State Bank of Tiruvangore, Madikaranai Branch, they were returned by the said branch of the bank stating that payment stopped by the drawer and that the said fact was informed by the bank on 9.2.1999 to the complainant.

7. P.W.3 is the Manager of the State Bank of Thiruvangore, Madikaranai branch. He would depose that Ex.P.1 & Ex.P.2 cheques were forwarded to Syndicate Bank, Hosur Branch for collection and that the accused Sundarakesari is having an account in their branch, but as on 5.2.1999 a sum of Rs.34/40 alone was in the credit of the accused's account. Ex.P.6 & Ex.P.7 are the intimation extracts informing the Syndicate Bank, Hosur Branch, about the dishonour of the cheques. Ex.P.8 is the copy of the letter dated 28.1.1999 to which the accused had intimated the bank to stop the payment.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

8. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused had denied his complicity with the crime. The accused has not let in either oral or documentary evidence by way of defence.

9. After going through the oral and documentary evidence let in before the trial Court, the learned trial judge has come to the conclusion that there was no proper service of notice to the accused as contemplated under Section 138(b) of the Negotiable Instruments Act and has further observed that there is a violation of the provision under section 142(b) of the Negotiable Instruments Act and accordingly held that guilt against the accused under Section 138 of the Negotiable Instruments Act was not proved and acquitted the accused under Section 255(1) of Cr.P.C., which necessitated the complainant to prefer this appeal.

10. Now the point for determination in this appeal is whether the order of the trial judge is perverse in nature to warrant any interference from this Court?

11. The Point:-

11(a) Heard the submissions made by the learned counsel Mr.N.S.Sivakumar appearing for the appellant and the learned counsel Mr.J.R.K.Bhavananthan appearing for the respondent and considered their rival submissions. The learned counsel Mr.N.S.Sivakumar appearing for the appellant would attract the attention of this Court to a wrong observation made by the learned trial Judge in her judgment. The learned counsel for the appellant would point out that at para 6 (inner page 7 to page 11 of the typed set) the learned trial Judge has observed that according to P.W.1, Ex.P.5 is the office copy of the notice, but at inner page No.9 at page 13 of the typed set, the learned trial judge has observed that no acknowledgment for Ex.P.5 was produced by the complainant, which had prevented the Court from coming to the conclusion that when the accused had received the notice to enable the Court to fix the date of cause of action. So according to the learned trial Judge, there is a violation of the mandatory provision contemplated under Section 138 of the Negotiable Instruments Act and also the provision under Section 142(b) of the Negotiable Instruments Act. It is pertinent to note from the anexure to the Judgment that Ex.P.6 is shown as ledger extract whereas from the records produced by the trial Court Ex.P.6 seems to be an acknowledgment dated 17.2.1999 (containing the postal seal dated 20.2.1999).

11(b) At this juncture the learned counsel Mr.J.R.K.Bahvananthan appearing for the respondent would bring to the notice of this Court that Ex.P.6-acknowledgment is not for Ex.P.5-notice by pointing out the address furnished in Ex.P.5 for

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the accused and the address given in Ex.P.6-acknowledgment for the accused. In Ex.P.5, copy of the notice, the address given for the accused is as follow:-

To,
Mr.SP.SUNDARAKESARI,
No.3, 4th Street, North Extension,
Subramaniyapuram,
Karaikudi - 623 003.

But in Ex.P.6 the address given for the accused is as follows:-

Sri.SP.SUNDARAKESARI,
Managing Partner,
TEXCONES TUBES COMPANY,
No.1/6, Mathur Road,
Alagappapuram Post,
Karaikudi - 623 003.

So the address furnished to the accused in Ex.P.5 differs from the address furnished to the accused under Ex.P.6. Further the learned counsel for the respondent would point out that in Ex.P.6 there is no seal of the company of the accused finds a place and one S.Ganesan has signed in the acknowledgment-Ex.P.6. Under such circumstances, the learned counsel for the respondent would contend that Ex.P.6 is not the acknowledgment for the original of Ex.P.5-notice. But the learned trial Judge has not at all discussed about Ex.P.6-acknowledgment and absolutely there is no discussion by the trial Court with regard to the above mentioned facts. If Ex.P.6 is the acknowledgment for the original of Ex.P.5 then there is a cause of action for the petitioner. But the definite observation of the learned trial judge is that there is no acknowledgment produced by the complainant for Ex.P.5-notice. Under such circumstances, this court feels that a definite finding is absolutely necessary in respect of Ex.P.6, which was not at all been considered by the trial Court. Under such circumstances, I am of the view that it is a fit case for remand to the trial Court for reappreciation of evidence by way of retrial. Point is answered accordingly.

12. In the result, the appeal is allowed and the judgment of the trial Court in C.C.No.106 of 1999 on the file of the Judicial Magistrate No.II, Hosur is set aside and the matter is remanded to the trial Court for reappreciation of the evidence. The trial Court shall give an opportunity to both sides to let in further evidence. It is made clear that the trial Court shall not be carried away by any of the observation made by this Court in this

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Judgment. The trial Court is directed to dispose of the case within two months from the date of receipt of copy of this order.
Ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Judicial Magistrate NO.II, Hosur.

2. The Chief Judicial Magistrate, Dharmapuri.

3. The Section Officer, Criminal Section, High Court Madras

+ one cc to Mr. J.R.K. Bhavananthan, Advocate sr no. 27953
+ one cc to Mr. M. Sathyanarayanan, Advocate sr no. 28597

ssv(co)
nm(03.05.07)

Crl.A.No.145 of 2001

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/